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## BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

2006 APR 20 P 4: 49

AZ CORP COMMISSION  
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IN THE MATTER OF THE FORMAL  
COMPLAINT OF PAC-WEST TELECOMM  
SEEKING ENFORCEMENT OF THE  
INTERCONNECTION AGREEMENT  
BETWEEN PAC-WEST TELECOMM AND  
QWEST CORPORATION

DOCKET NO. T-01051B-05-0495

T-03693A-05-0495

**MOTION FOR AN ORDER  
SUSPENDING THE  
RECOMMENDED  
OPINION AND ORDER, AND  
FOR ADDITIONAL  
BRIEFING, WITH REQUEST FOR  
EXPEDITED CONSIDERATION**

Qwest Corporation ("Qwest") hereby moves, with a request for expedited consideration, that the Administrative Law Judge suspend her Recommended Opinion and Order in this proceeding, and permit supplemental briefing regarding the very recent federal precedent established in *Global NAPs v. Verizon New England*, 2006 WL 924035 (1<sup>st</sup> Cir., April 11, 2006) ("*Global NAPs v. Verizon*").

In *Global NAPs v. Verizon*, the First Circuit affirmed the lower court's judgment in favor of Verizon and the Massachusetts Department of Telecommunications and Energy ("DTE"), upholding the DTE's arbitration decision. The DTE arbitration order required the competitive local exchange carrier ("CLEC") to pay to Verizon access charges for all "virtual NXX" traffic, including non-local ISP-bound traffic, and rejected the CLEC's argument that state commissions were preempted by the FCC's *ISP Remand Order* from regulating intercarrier compensation of all ISP-bound traffic. The Court

1 undertook an analysis of the FCC's *ISP Remand Order*, stating that the *ISP Remand*  
2 *Order* was "at the heart of the case." In the course of its deliberations, the First Circuit  
3 sought the views of the FCC by inviting that agency to file an *amicus* brief. In its *amicus*  
4 brief, which the Court described as "helpful," the FCC's attorneys stated their views of  
5 the breadth of the *ISP Remand Order*, which is also at the crux of this proceeding.

6 On April 12, 2006, Qwest filed its Notice of Seventh Filing of Supplemental  
7 Authorities in this matter, attaching thereto the First Circuit's opinion in *Global Naps v.*  
8 *Verizon* issued April 11, 2006 and the *amicus* brief filed by the FCC in that case on  
9 March 13, 2006. Qwest's pleading contained no argument or legal analysis of either the  
10 decision or the *amicus* brief. The ALJ's Recommended Opinion and Order was released  
11 the next day, virtually contemporaneous to the filing of the *Global NAPs v. Verizon*  
12 supplemental authority.

13 The First Circuit's decision in *Global NAPs v. Verizon* and the *amicus* brief are  
14 critical developments directly relevant to the issues raised in this proceeding. Qwest  
15 respectfully suggests that these developments have a direct impact on the Recommended  
16 Opinion and Order and ultimately on the Commission's deliberations. Both the  
17 Commission and the ALJ will benefit from the parties' analyses of how these new federal  
18 developments impact the issues in this proceeding.

19 The date by which Qwest must file its exceptions to the Recommended Opinion  
20 and Order is April 24, 2006. Qwest intends to address the *Global NAPs v. Verizon*  
21 precedent in its exceptions. Pac-West may desire to express its views as well, but the  
22 Commission's rules do not provide for a response to exceptions. Qwest believes that its  
23 proposal for the suspension of the Recommended Opinion and Order in order to allow for  
24 a single round of simultaneous briefs on these recent developments is the best way to  
25 proceed. Qwest believes additional briefing can be accommodated by briefs not to  
26 exceed ten (10) pages in length.

Wherefore, Qwest respectfully requests that the ALJ immediately suspend the Recommended Opinion and Order, and accept supplemental briefing on the *Global NAPs v. Verizon* precedent and the insights offered by the FCC's *amicus* brief.

RESPECTFULLY SUBMITTED, this 20<sup>th</sup> day of April, 2006.

FENNEMORE CRAIG

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ORIGINAL and 15 copies hand-delivered for filing this 20<sup>th</sup> day of April, 2006 to:

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this 20<sup>th</sup> day of April, 2006 to:

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